room and not one of those who assaulted the deceased, whereas in open court during the trial he stated that the 1st appellant assaulted the deceased.

Khairuddin and Noorazali were the two main witnesses. The learned judge very carefully considered their testimony and had assessed their credibility. He accepted the testimony of Noorazali and concluded that Khairuddin's evidence was substantially the truth. Evidently the deceased sustained the injuries while in the custody of the Cheras Police with the first appellant as the head of the team of interrogators. The injuries were inflicted in the course of the intensive interrogation on two separate occasions, on arrival from Johore and on the same evening commencing shortly after 9 p.m. It went on without a break for approximately three hours until after midnight when the deceased collapsed and died shortly after. There was evidence to show that the first appellant went in and out of the interrogation room and was seen by Khairuddin beating the deceased. The first appellant was in the room when the deceased collapsed and so were the other appellants.

In assessing the evidence of Khairuddin, the trial judge considered the fact that Khairuddin and Noorazali were in Police custody and that he was warned shortly before his release not to reveal what had happened to the deceased.

Viewed as a whole it seems clear that the finding of fact made by the trial judge turned solely on the credibility of the witnesses. The trial judge heard the testimony of each witness and had seen him. He also had the opportunity to observe the demeanour of the witnesses. Discrepancies will always be found in the evidence of a witness but what a judge has to determine is whether they are minor or material discrepancies. And which evidence is to be believed or disbelieved is again a matter to be determined by the trial judge based on the credibility of each witness. In the final analysis it is for the trial judge to determine which part of the evidence of a witness he is to accept and which to reject. Viewed in that light we did not consider it proper for this court to substitute its findings for that of the learned trial judge.

The principle of law governing appeals in criminal cases on questions of fact is well established, in that the Appeal Court will not interfere unless the balance of evidence is grossly against the conviction especially upon a finding of a specific fact involving the evaluation of the evidence of a witness founded on the credibility of such witness.

In the instant case the learned trial judge very carefully analysed all the available evidence before him and made specific findings of fact founded upon that which he believed to be the truth. He also drew certain inferences from facts specifically found. In this respect we may form our independent view but we should only do so where the fact upon which the inference was drawn was either unwarranted or manifestly against the weight of evidence. That was not the case here. In considering the appeal before us we gave very careful consideration to submissions made by Mr. Manjit Singh, counsel for the first appellant, and Encik Radzi, counsel for second, third and fourth appellants. In our judgment there was no merit in the argument and we were in full agreement with the findings of the learned trial judge. We therefore dismissed the appeal against conviction.

As for the other ground of appeal it would suffice for us to say that the findings of the trial judge were also based on essentially questions of fact and we saw no reason to disturb such findings.

There is a cross-appeal by the Public Prosecutor against the acquittal of A.S.P. Liew in the court below. For reasons that we have stated earlier there is no reason at all why we should interfere with the findings of the learned trial judge. We therefore dismissed the cross-appeal.

In reply to submissions made by counsel for the appellants, Mr. Mah for the Public Prosecutor urged the court to substitute for the convictions of the appellants under section 330 of the Penal Code (voluntarily causing hurt to extort a confession) convictions under section 331 (voluntarily causing grievous hurt to extort a confession). The maximum sentence under the first section is seven and under the second ten years. At the same time Mr. Mah submitted that the sentences on the second, third and fourth appellants should be more than that imposed by the learned trial judge. We did not alter the convictions as submitted, though we agreed that the hurt caused to the deceased was grievous — because it would not be right for us to increase the sentences on the second, third and fourth appellants, without increasing the sentence of three years imposed by the learned trial judge on their superior, the first accused, as to which there was no appeal by the Public Prosecutor. In the event we affirmed the sentences on each of the accused, and for that purpose, in our judgment, convictions under section 330 suffice.

On the day following arguments, in a preliminary judgment the Lord President spoke at length on sentences, and there is no need for us to say anything more about them.

Order accordingly.

Solicitors: *Manjit Singh Dhillon & Co.; Radzi Sheikh Ahmad & Partners; Jagjit & Co.*

LEE CHI MIN & ANOR. v. SUPERINTENDENT OF LAND AND SURVEY DEPARTMENT, KUCHING

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) & Syed Othman F.J.) May 5 & July 3, 1980]

[Kuching — Federal Court Civil Appeal No. 168 of 1979]

Land Law — Subdivision of land — Lots to be surrendered to Government for open space — Title to lots issued by mistake without endorsement — Notice by Registrar to correct documents of title — Action by Director of Lands to enter special conditions — Application for endorsement to be cancelled — Sarawak Land Code (Cap. 81), ss. 123, 136 & 194 — Land (Control of Sub-division) Ordinance (Sarawak Cap. 82), s. 10.

The appellants had applied for sub-division of their land and permission was granted subject to the surrender of two lots to the State Government free of charge for use as an

open space. By mistake titles were issued for those two lots and the titles were not endorsed with the Special Condition. Subsequently the Registrar of Lands and Surveys purported to rectify the land register under section 123 of the Land Code. It was held in the High Court that the Registrar had adopted the wrong procedure. The Superintendent of Lands and Surveys thereupon acting under section 10 of the Land (Control of Sub-division) Ordinance instructed the Registrar to enter the Special conditions on the register affecting the lands and this was done. The appellants applied for an order that the endorsement be cancelled.

The application was dismissed in the High Court and the appellant appealed.

Held: (1) the language of section 10 of the Land (Control of Sub-division) Ordinance was wide enough to empower the Superintendent of Lands and Surveys to direct the Registrar to endorse the register relating to the two pieces of land to the effect that they were subject to the Special Conditions;

(2) the Registrar was not prohibited as the prohibition under section 194 of the Land Code does not apply to alterations made under section 10 of the Ordinance;

(3) the titles issued to the appellant were defective and were not registrable under the Land Code.

Cases referred to:-

(1) *Attorney-General of Victoria* v. *John Ettershank* (1875) L.R. 6 P.C. 354.

(2) *Davenport* v. *The Queen* (1877) 3 App. Cas. 115.

(3) *Attorney-General* v. *Collom* [1916] 2 K.B. 193.

(4) *The King* v. *Paulson* [1921] 1 A.C. 271.

FEDERAL COURT.

Chew Pok Oi for the appellants.

Peli ak Aron for the respondent.

Cur. Adv. Vult.

Suffian L.P. (read by Lee Hun Hoe C.J. (Borneo)): The appellants owned a piece of land, Lot 541, Block 207, Kuching North Land District. They applied for sub-division. Permission to sub-divide was granted under the Land (Control of Sub-division) Ordinance (Sarawak Cap. 82) ("the Ordinance") on certain conditions. Among other things, sub-lot 69 (subsequently renumbered as Lot 869) and sub-lot 170 (subsequently renumbered as Lot 970) were to be surrendered to the State Goverenment free of charge for use as open space.

The appellants agreed and the land was accordingly sub-divided. Titles were prepared, including for the two new lots, 869 and 970. Instead of keeping these titles, the State Government issued them to the appellants. That was a mistake. They made a second mistake when they forgot to endorse the titles with the special condition that each sub-lot was to be used as an open space.

The appellants received the titles and kept quiet about the mistakes. For the next ten years the State Government demanded quit rent in respect of each lot and the appellants paid the quit rent demanded. That was another mistake, for the appellants having agreed to surrender them the lands belonged to the State Government and there was no question of them paying rent on land which had been surrendered to Government.

The titles had been issued to the appellants on May 20, 1964.

Then on February 28, 1975, over ten years later, the Registrar of Lands and Surveys, First Division, caveated the lands. On July 14, 1976, he served on the appellants a notice under section 136(2) of the Land Code, Cap. 81, ("the Code"), saying that the special conditions had been omitted from the issue documents of title owing to an oversight and that the appellants should deliver them up to him, so that he might correct them, failing which he would rectify the land register and dispense with the production of the titles under section 123 of the Land Code.

Sections 123 and 136 of the Code provide —

"123. (1) The Registrar may for reasonable cause dispense with the production of any issue document of title, ... for the purpose of entering the particulars by this Code required to be entered upon the transfer, or other dealing with land, under the provisions of this Code.

(2) When the production has been dispensed with under subsection (1), the Registrar shall, after giving one month's notice in the Gazette of his intention so to do, notify in the Register that the particulars of the registration have not been entered on the issue document of title or charge, and the registration shall thereupon be as valid and effectual as if the particulars had been so entered.

136. (1) Subject to any rules made under section 213, the Registrar may, upon such evidence as appears to him sufficient, correct errors or omissions in any document of title or other instrument, or in the Register, and may make any entry necessary to supply any such omission, and any errors so corrected or entries so supplied shall have the like validity and effect as if such error or omission had not been made, except as regards any entry in the Register prior to the actual time of correcting that error or omission.

(2) Where it appears to the satisfaction of the Registrar that —

(a) any document of title or other instrument has been issued in error or contains any misdescription of land or of boundaries;

(b) ...; or

(c) the production of any document of title or other instrument is required for the purpose of enabling the Registrar to exercise his powers under subsection (1),

he may require the person to whom that document of title or instrument has been issued, or by whom it is retained, to deliver up the same for the purpose of being ... corrected, ...

(3) If any such person refuses or neglects to comply with any such request..., the Registrar may apply to the High Court to issue a summons for such person to appear before the court and show cause why such ... instrument should not be delivered up to be ... corrected.

(4) If such person, in answer to such summons as aforesaid, is unable to show cause or, when served with such summons, neglects or refuses to attend before the court at the time therein appointed, ... the court may direct the Registrar to ... correct any document of title or other instrument, or any entry in the Registrar relating thereto, and to substitute and issue such other document of title or instrument or make such other entry as the circumstances of the case may require."

The appellants disputed the right of the Registrar to rectify the register under section 136 of the Code. The Registrar executed a Memorandum of Rectification of Land Register on August 5, 1976, and then rectified the register by entering on it the special conditions. This instrument was registered at the Registry on August 5.

When the appellants failed to deliver the issue documents of title, the Registrar published a notice in the Sarawak *Gazette* under section 123(2) of the Code asking the appellants to show cause why he should not notify in the register that the special conditions had not been entered on the issue documents of title

and that upon the registration of the Memorandum of Rectification of Land Register the said conditions shall thereupon be as valid and effectual as if they had been so entered.

On November 29, 1976, the appellants took out O.S. K135 of 1976, praying, among other things, for an order that the special conditions entered on the register be cancelled.

On February 28, 1977, the learned judge granted the order, on the ground that the Memorandum of Rectification of Land Register was not a dealing within the meaning of section 123(1) of the Code, and that accordingly by acting under it the Registrar had adopted the wrong procedure.

Undeterred, the Superintendent of Lands and Surveys, First Division ("the respondent") on May 27, 1977, acting under section 10 of the Ordinance instructed the Registrar to enter the special conditions on the register affecting the lands, which was done.

Now, section 10 of the Ordinance reads:

"The Director of Lands and Surveys shall, in respect of any land affected by any survey plan approved by this Ordinance and subject to the provisions of section 21, make or cause to be made in the Register kept under the Land Code, an endorsement to the effect that such land is subject to the conditions of such approved survey plan."

On April 6, 1977, the appellants applied by motion (Originating Motion K12 of 1978, out of which arises this appeal) for an order that the endorsement be cancelled.

Be it noted that under section 10 the initiative should be taken by the Director; but here it was taken by the Superintendent of Land and Survey Department. But no point was made regarding this.

The appellants put forward three arguments before the learned judge. First, it was argued that the use of section 10 was "illegitimate". Secondly, it was argued that in view of the notice under section 136(2) of the Land Code, the Superintendent could not thereafter act under section 10 of the Ordinance to rectify the Land Register but should have instead proceeded to act under the other provisions of section 136 of the Code, which he did not do. Thirdly, it was argued that the action of the Superintendent was prohibited by section 194 of the Land Code.

Thus the issue was — and is — did the Superintendent have power to do what he did? He contended that he had that power under section 10 of the Ordinance. The appellants contended that he did not.

In the event, the learned judge dismissed the appellants' application and the appellants appeal.

With respect I agree with the learned judge and would dismiss this appeal.

As to the first and second arguments which are inter-related, the appellants say that it was wrong of the Government to act under section 10 of the Ordinance, for having issued notice under subsection (2) of section 136 of the Land Code, the Government, it is said, should have continued to act under that section by applying to the High Court to issue a summons for the appellants to appear before the court and show cause why the titles should not be delivered up and corrected; for if that had been done, the appellants (it is said) would have had an opportunity of showing cause why the titles should not have been delivered up and corrected — whereas the appellants were deprived of that opportunity by the Government simply acting under section 10 of the Ordinance. With respect I agree with the learned judge that the language of section 10 of the Ordinance is wide enough to empower the respondent to direct the Registrar, as he did, to endorse the register relating to these two pieces of land to the effect that they were subject to the special conditions already referred to. Approval to sub-division was given under the Ordinance, and approval was granted subject to these special conditions, and there is nothing in the section to suggest that action under it must be taken only at the time of approval, and not after. In my judgment, it may be taken after the time of approval, even long thereafter.

As regards the third argument, section 194 of the Code provides:

"No Government officer or other person shall make any entry or endorsement on, or alteration to, the Register or to any document of title which he is not authorised to make under the provisions of this Code."

In my judgment, this prohibition refers only to alterations which are not authorised by the *Code*. With respect I agree with the learned judge that this prohibition does not apply to alterations made under section 10 of the Ordinance. The Ordinance is a special law dealing with sub-division, and on general principle overrides the general provision of the Code. Furthermore, its section 27 provides:

"Nothing in this Ordinance shall affect the provisions of any other Ordinance relating to land, except that it shall prevail over the Land Code to the extent of any inconsistency therewith."

A fourth argument was advanced before us, namely that the issue of titles to the appellants without any condition attached thereto, and the demand for and acceptance of quit rent by Government for ten years, could reasonably be construed as waiver and that the State is estopped from claiming the lands and therefore the Registrar could not properly cause the special conditions to be endorsed on the register; and four cases were cited in support of this argument: *The Attorney-General of Victoria* v. *John Ettershank,*[1] *Davenport* v. *The Queen,*[2] *Attorney-General* v. *Collom*[3] and *The King* v. *Paulson.*[4]

With respect I do not think there is any merit in this argument. The facts here are quite different from the facts in the cases cited. There, there was a lease and breach of covenant by the lessee entitling the lessor to forfeit the lease; but instead of taking action to forfeit, the lessor accepted payment of rent by the lessee: and it was held that acceptance of rent was waiver by the lessor of the breach and therefore he could not forfeit the lease. Here there is no question of breach by the lessee which the lessor can be said to have waived.

Here permission to subdivide was given on condition that the two lots should be surrendered to Govern-

ment without any charge for use as open space. This condition was agreed to by the appellant. Government need not have issued title in regard to these two lots, or having issued them it should have registered them in their own name as owners. Instead they issued them, and in the name of the appellants without mention of the special conditions and then handed them over to the appellants. The appellants must have rubbed their eyes in disbelief when the documents of title landed on their laps. The appellants knew all this was a mistake, and yet kept quiet. I do not think that they should be allowed to profit from Government's mistake.

For the above reasons, I would dismiss this appeal with costs. The appellants' deposit to be paid to the respondent against taxed costs.

Lee Hun Hoe C.J. (Borneo): This appeal raises the question of the proper use of section 10 of the Land (Control of Sub-division) Ordinance (Cap. 82).

Briefly, the facts are as follows. Appellants were the joint owners of a piece of land situated at Green Road, Kuching containing an area of 21.88 acres, more or less, and described as Lot 451 Block 207 Kuching North Land District. The lot has been wrongly stated as 541 in the judgment. Appellants applied to the Kuching Rural District Council for the subdivision of their land. Approval was given for their land to be subdivided into 251 lots subject to certain conditions which were clearly accepted by appellants. I am concerned with the conditions imposed on Lots 69 and 170. The conditions in both lots are the same, that is, each lot is to be surrendered to the Government free of all costs for the purpose of an open space. Titles were issued and granted by the Superintendent of Lands & Surveys, 1st Division, Kuching to appellants for the lots including Lots 69 and 170 which are now numbered and known as Lots 869 and 970. However, the special conditions imposed were not endorsed on Lots 869 and 970. In fact, quit rents were demanded and paid. I understand that the Land Office has now changed its practice with regard to subdivision of land to ensure that endorsements on titles on surrendered lots are made before titles are issued. Subsequently, the Registrar served appellants a notice dated July 14, 1976 under section 136(2) of the Land Code (Cap. 81) pointing out the omission due to an oversight and asking them to produce the titles for endorsement.

The Registrar made use of section 123 of the Land Code. Instead of surrendering the titles for endorsement appellants took out an originating summons and succeeded in obtaining an order dated February 28, 1977 (1) that the special condition, namely, "This land is to be used only for the purpose of an open space and shall be surrendered to the State without compensation upon the Superintendent of Lands & Surveys, First Division, giving one month's notice to the registered co-proprietors" entered by the Registrar in the register concerning the said two parcels of land be cancelled from the register; (2) that all further steps taken by the Registrar and/or the Superintendent of Lands & Surveys, First Division, pursuant to the special condition be set aside and that there be no order as to costs. In effect the learned judge held the use of section 123 of the Land Code was not proper and correct. The result was that the Director of Lands & Surveys exercised his power under section 10 of the Land (Control of Sub-division) Ordinance (Cap. 82). On May 27, 1977 the Superintendent of Lands & Surveys, 1st Division caused the Registrar to enter in the register affecting the two parcels of land a memorandum of endorsement containing the following condition: —

"This land is for an open space which is to be surrendered to the Government of Sarawak free of all costs."

By an originating motion dated April 9, 1979, appellants applied for an order to set aside the said condition contained in the memorandum. It was argued before the learned judge and this court that after the completion of the subdivision following the issue of new documents of titles of the subdivided lots the Director has no power to act under section 10 of the Land (Control of Sub-division) Ordinance. I think the learned judge was right to take the view that the wordings of the section are wide enough for the Director to act during and after the subdivision of the land affected by the survey plan approved under the Ordinance.

Appellants contended that section 10 of Cap. 82 was never meant to be used for correcting errors. The proper provision to use was section 136(3) of Cap. 81. Why was it that the Registrar was reluctant to use section 136(3) of Cap. 81? The respondent had explained the events in this appeal. In concluding his judgment, the learned judge explained that on receipt of the memorandum, the Land Registrar would cause the endorsement to be made on the register under section 136(1) of the Land Code in respect of Lots 869 and 970. Next, he would act under section 136(2)(c) requiring the applicants to deliver up the new documents of titles to be corrected. If the applicants should refuse to do so, the Registrar would then act under sections 136(3) and (4). He considered the submission of appellants to be devoid of merits.

I do not propose to go into those cases cited on the question of waiver and estoppel as it would mean going into the merits of the case. The only question is the proper use of section 10 of Cap. 82. Paragraph 12 of 1st appellant's affidavit makes this quite clear where it is stated: —

"That I am advised and verily believe that, procedurally, without the necessity of going into the merits of the matter, the action of the Superintendent as set out in paragraph 10 hereof was/is bad in law."

In this particular case section 10 of Cap. 82 was the proper provision of the law to be used. It was not the Registrar, as alleged by appellants, who made use of section 10 but the Director of Lands & Surveys. The Registrar does not come in. He only comes in when the actual writing of endorsement is required. Although Cap. 82 is a distinct and separate Ordinance yet it is complementary to the Land Code. The power under section 10 of Cap. 82 is exercised by the Director. It is not a rectifying provision in the same sense as section 136 of Cap. 81. Section 10 does not mention any thing about error or omission. This power of the Director is separate from his power under the Land Code. There is no time-limit for the

Director to act. The proper time for the Director to act would be before the issuance of documents of titles. I understand steps have been taken to change the earlier practice to prevent similar incidents as the present one from occurring.

The process of subdivision of land is set out in Cap. 82. It can be assumed that the provisions of section 9 of Cap. 82 had been complied with. The next step was for the Director of Lands & Surveys to take action under section 10 as soon as practicable. This had not been done until after the titles had been issued and the Registrar had to take action under section 136 of the Land Code. These were *bona fide* departmental administrative errors. I consider the learned judge to be right in taking the view that in this particular case, the provision of section 10 of Cap. 82 must be complied with first before the Registrar could take action under section 136 of Cap. 81. There may be situations whereby only section 136 of Cap. 81 would come into play without having to consider section 10 of Cap. 82.

Appellants did not make any claim under section 12 of Cap. 82 against the local government within the prescribed period of six months from the date of the deposit of the survey plan under section 9(3) of Cap. 82. The fact that appellants were issued with titles for Lots 869 and 970 and by mistake asked to pay quit rent does not transform void titles into valid titles. There can be little doubt that the titles were wrongly issued by the Land Office in respect of Lots 869 and 970 which were meant for open space.

Section 20 of Cap. 82 envisages that the owner would surrender his title or titles and after approval of subdivision of his land new title or titles would be issued to him for the unexpired period of the title or titles surrendered and on terms and conditions then usual for grants or leases of State land being a document or documents of *titles which would permit the land to be used in accordance with the conditions of the deposited plan.* In my view, the titles for Lots 869 and 970 were not properly issued for use in accordance with the conditions of the deposited plan.

In my opinion, these titles should never have been delivered in the case of subdivision before action was taken under section 10 of Cap. 82 as Lots 869 and 970 were surrendered for open space on approval of subdivision. The titles were defective in that they are not registrable under the Land Code by virtue of section 17 of Cap. 82 which, in dealing with the avoidance of certain transactions, relating to subdivision, provides that: —

"Any plan, agreement, deed or instrument of any kind whatsoever whereby any subdivision contrary to the provisions of this Ordinance is created, recognised, granted or reserved shall be deemed to be void and of no effect, and shall not be registrable under the provisions of the Land Code."

For reasons given, I would dismiss the appeal with costs.

Syed Othman F.J. concurred.

Appeal dismissed.

Solicitors: *Chan, Jugah, Wan Ullok & Co.*

TARA RAJARATNAM v. DATUK JAGINDER SINGH & ORS.

[F.C. (Wan Suleiman, F.J., Ibrahim Manan F.J., & Hashim Yeop A. Sani J.) January 16 & July 9, 1980]
[Kuala Lumpur — Federal Court Civil Appeal No. 201 of 1979]

Practice and Procedure — Appeal — Notice of appeal not in accordance with form — Failure to sign memorandum of appeal — Notice of appeal filed before Judge issued certificate not to hear further argument — Irregularities curable — Federal Court (Civil Appeals) (Transitional) Rules, 1963, rules 6(3), 19(3) and 95(1) — Courts of Judicature Act 1964, s. 68(2).

In this case the respondents applied for orders that the appeal filed by the appellants be dismissed as (a) the notice of appeal did not comply with Form I of the First Schedule to the Federal Court (Civil Appeals) (Transitional) Rules, 1963; (b) the copies of the memorandum of appeal were not signed and dated as required by rule 19(3) and Form 3 of the First Schedule to the Rules; and (c) the notice of appeal was filed before the learned judge issued his certificate that he required no further argument. The appellant applied for amendment of the Notice of appeal and Memorandum of appeal to comply with the Rules.

Held: (1) the non-compliance with the requirements of rule 6(3) and Form I of the Federal Court (Civil Appeals) (Transitional) Rules, 1963, in respect of the notice of appeal was in the circumstances of this case a mere irregularity which should not render the notice of appeal void;

(2) the failure to sign and date the memorandum of appeal was curable under rule 95(1) of the Rules;

(3) the appellant should be granted leave to appeal, even though she has not applied for such leave, as it was desirable to hear the appeal on its merits and it was the duty of the court to see that justice be seen to be done.

Cases referred to:-

(1) *Hong Kim Sui & Anor.* v. *Malayan Banking Bhd.* [1971] 1 M.L.J. 289.

(2) *R.* v. *Justices of Kent* (1872-73) L.R. 8 Q.B.D. 305.

FEDERAL COURT.

P. Cumaraswamy (*C.D. Das* and *S. Naicker* with him) for the appellant.

R. Khoo for the 1st and 3rd respondents.

2nd respondent in person.

Cur. Adv. Vult.

Ibrahim Manan F.J. (delivering the judgment of the Court): In the action the plaintiff has asked for a declaration that the transfers to and registration of the land held under Certificate of Title No. 13817 Lot No. 6025 situate in the Mukim of Senai-Kulai, with a bungalow dwelling house erected thereon (the said property) in the name of the second defendant and subsequently in the name of the third defendant as beneficial owners thereof are unlawful, null and void, and for other consequential orders. On October 2, 1979 the defendants applied by way of Summons-in-Chambers No. 608 of 1979 for an Order that the action be dismissed on the grounds of *res judicata,* the issues therein having been determined and adjudicated upon in an action between the same parties in Johore Bahru High Court Civil Suit No. 261 of 1977 and the same is frivolous and vexatious and an abuse of the process of the court and that the plaintiff pay to the defendants their costs in the action and the application and that in the meantime all further proceedings in the action be stayed. On October 10, 1979 Anuar J. granted the application. The plaintiff (appellant) is appealing against the learned judge's decision.